

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

UNITED STATES OF AMERICA

CASE NO.: 8:03-CR-77-T-30-TBM

HATIM AL-ARIAN,
HAMMOUDEH,
AN ZAYED BALLUT,
NAJI FARIZ

**GOVERNMENT'S RESPONSE TO DEFENDANT HATIM NAJI FARIZ'S
MOTION TO SUBMIT SUPPLEMENTAL AUTHORITY**

The United States of America by Paul I. Perez, United States Attorney, Middle
District of Florida, hereby responds to defendant Hatim Naji Fariz's Motion to Submit
Supplemental Authority:

On February 6, 2004, counsel for defendant Fariz filed the above-
mentioned motion (Doc. 444), which purports to bring to this Court's attention a recent
decision issued by the U.S. District Court for the Central District of California in
Arian Law Project v. Ashcroft, __ F. Supp. 2d __, 2004 WL 112760 (C.D. Cal.
2004) (hereafter referred to as *HLP II*). In as much as the defendant's filing
argument, counsel for the United States responds accordingly.

HLP II, *supra*, involved a pre-enforcement civil challenge to the
constitutionality of § 805(a)(2)(B) of the Uniting and Strengthening America by Providing
Enhanced Tools Required to Intercept and Obstruct Terrorism Act ("USA PATRIOT
Act") and §§ 302 and 303 of the Antiterrorism and Effective Death Penalty Act, which
prohibit the provision of material support, including "expert advice or

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ce," to designated foreign terrorist organizations. See § 805(a)(2)(B), 18 U.S.C. A(a) and 2339B(a). In that decision, the district court held that the term "expert assistance" was unconstitutionally vague. *See HLP II*, 2004 WL 112760 at the district court, however, rejected the plaintiffs' remaining claims that the was overbroad, *id.* at *15, and that the provision criminalized associational *id.* at 17. The district enjoined the Government from enforcing the prohibition ing "expert advice or assistance" against the named plaintiffs that were found standing under Article III of the Constitution. *Id.* at 18. Notably, the court ly declined to grant a nationwide injunction. *Id.*

In his filing, the defendant asserts that the district court's decision in *HLP* cores his "need to be provided sufficient notice of the types of material support ces that are alleged to be at issue in Count Three of the indictment." *See* nt's Motion, at 3. Defendant's claimed "need" is vastly overstated. Whatever ss the district court in *HLP II* found in the statute does not extend to the ns in the indictment. As this Court found in denying the defendant's previous

Specifically, the district court found that the government had "failed to ely distinguish the provision of 'expert advice or assistance' from the provision g' or 'personnel'" that was previously held to be unconstitutionally vague in *Humanitarian Law Project v. Reno* (hereafter *HLP I*), *id.* at 14. *See Humanitarian Law v. Reno*, 9 F. Supp. 2d 1176 (C.D. Cal. 1998) (granting plaintiffs' motion for ry injunction of terms "personnel" and "training" on vagueness grounds), *aff'd*, 1140 (9th Cir. 2000) (affirming grant of a preliminary injunction); *Humanitarian ect v. Reno*, No. CV 98-1971 ABC (BQRx), 2001 U.S. Dist. LEXIS 16729 (C.D. 1) (issuing permanent injunction of terms "personnel" and "training"), *aff'd in rev'd in part*, 352 F.3d 382 (9th Cir. 2003). To the extent the district court's g was based on *HLP I*, the government notes that on January 20, 2004, it filed U.S. Court of Appeals for the Ninth Circuit a request for rehearing and g en banc of the *HLP I* decision. The government's petition is pending.

or a bill of particulars, "the Indictment in this case is highly specific as to the allegations supporting each count and, for the most part, clearly exposes the government's theory as to each defendant's involvement in the alleged criminal offense." See January 21, 2004 Order at 4 (granting in part and denying in part the defendant's motion for bill of particulars). Indeed, only overt acts alleged in ¶¶ 43(234)-(235) pre-date the October 26, 2001 PATRIOT Act amendment that added the term "aid, abet, advise and assistance," and those allegations set forth all the essential elements of the offense with sufficient detail to put the Defendant on notice of the charges charged against him so that he can properly prepare a defense. See the government's Memorandum in Opposition to Defendant's Hatim Naji Fariz's Motion to Dismiss Counts Three and Four of the Indictment, at 16 (citing *United States v. Lindh*, 2004 Fed. App. 2d 541, 576 (E.D. Va. 2002)).

Accordingly, the government respectfully submits that the district court's decision in *HLP II* does not warrant reconsideration of this Court's January 21, 2004, decision denying the defendant's claims that the indictment in this case fails to provide adequate notice.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent
mail this 19th day of FEBRUARY, 2004, to the following:

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